



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0197]

Hours of Service of Drivers: R&R Transportation Group; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant the R&R Transportation Group (R&R) an exemption from the minimum 30-minute rest break requirement of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The exemption is available only to R&R's drivers engaged in the transportation of materials that by their nature must be attended, such as radioactive materials, pharmaceuticals, and ammunition. The exemption provides these drivers the same regulatory flexibility that the HOS regulations allow drivers transporting explosives, i.e., to use 30 minutes or more of on-duty attendance time to meet the HOS rest break requirements, provided they do not perform any other work during the break.

DATES: The exemption is effective [INSERT DATE PUBLISHED IN THE FEDERAL REGISTER] and expires on [INSERT DATE TWO YEARS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schultz, FMCSA

Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

On December 27, 2011, FMCSA published a final rule amending the HOS regulations (49 CFR part 395) for drivers of CMVs (76 FR 81133). The final rule included a new provision requiring certain drivers to take a rest break during their duty

day. Specifically, the rule states that “driving is not permitted if more than 8 hours have passed since the end of the driver’s last off-duty or sleeper-berth period of at least 30 minutes” [49 CFR 395.3(a)(3)(ii)]. This provision took effect on July 1, 2013.

Under the HOS rules, a driver is on duty if he or she is “performing any other work in the capacity, employ, or service of a motor carrier” (§ 395.2). A driver is off duty when relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo it may be carrying. However, the Agency has recognized that under certain circumstances it is unsafe for CMVs to be left unattended so that the driver can take 30 minutes off duty. By regulation, FMCSA allows operators of CMVs transporting certain explosives to satisfy the rest-break requirement by using 30 minutes or more of on-duty attendance time providing they perform no other work during the break [49 CFR 395.1(q)]. Drivers employing this provision are required to annotate their duty-status record to indicate that they have used the exception.

The Agency has granted temporary exemptions of the type provided by 49 CFR 395.1(q) to drivers transporting security-sensitive radioactive materials (78 FR 32700, May 31, 2013), weapons, munitions, and sensitive/classified cargo (80 FR 20556, April 16, 2015), and oversize/overweight (OS/OW) loads (80 FR 34957, June 18, 2015).

Request for Exemption

R&R operates three for-hire motor carriers that transport property in interstate commerce: R & R Trucking, Inc., USDOT 382936; TNI USA Inc. NC dba AATCO, USDOT 513601; and NEI Transport, LLC, USDOT 676270. R&R indicates that these three entities operate 255 power units and that approximately 290 drivers would be covered by the exemption. R&R’s application for exemption states that the goods it transports are of such a nature or value that its drivers must keep the CMV under constant

observation to prevent theft or an adverse security incident. The application provides examples of the goods transported by R&R CMVs: weapons, ammunition, night-vision goggles, pharmaceuticals, and radioactive materials. R&R maintains constant attendance of such loads in order to protect the public from a major security or hazardous material event. R&R states that Federal contracts often require CMV drivers to maintain constant surveillance of the vehicle, and may require the driver of an escort CMV to maintain constant surveillance as well. In addition, R&R states that the U.S. Department of Homeland Security may require surveillance as part of a security alert posted in the National Terrorism Advisory System, and that some Federal agencies, in response to a threat, establish a security threat zone, or geo-fence, restricting or barring further movement of an R&R CMV. R&R states that the Department of Defense provides documentation to CMV drivers to alert roadside inspectors of surveillance requirements.

R&R requested an exemption from the HOS regulation pertaining to rest breaks [49 CFR 395.3(a)(3)(ii)] to allow R&R drivers providing surveillance services to be treated the same as CMV drivers attending explosives under § 395.1(q). R&R believes that transportation under the requested exemption would achieve a level of safety and security that is at least equivalent to what would be obtained by following the normal break requirements in § 395.3(a)(3)(ii). R&R states that it will restrict its drivers of such CMVs from performing any other on-duty functions while satisfying the 30-minute break requirement. R&R states that it will require its drivers to annotate their records of duty status to indicate on-duty periods used to satisfy the rest-break requirement in accordance with § 395.1(q).

It should be noted that there is no motive for a driver or carrier to claim this exemption when not entitled to it. A driver who is not required constantly to attend his

or her vehicle must take the minimum 30-minute rest break as off-duty time, which does not count against the driving window of 60 hours on duty in 7 days or 70 hours in 8 days. A driver claiming this exemption unnecessarily would be required to take the same rest breaks, but would be on-duty and the time would count against the 60- or 70-hour limit.

Public Comments

On July 13, 2015, FMCSA published notice of this application, and asked for public comment (80 FR 40120). No comments were received to the docket.

FMCSA Decision

FMCSA has evaluated R&R's application for exemption. The Agency believes that R&R's carriers will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)], and therefore grants this exemption, subject to the terms and conditions outlined below.

Terms of the Exemption

1. Drivers of R & R Trucking, Inc., USDOT 382936; TNI USA Inc. NC dba AATCO, USDOT 513601; and NEI Transport, LLC, USDOT 676270, who are transporting materials that by their nature must be attended, such as radioactive materials, pharmaceuticals, and ammunition, are exempt from the requirement for a 30-minute rest break in § 395.3(a)(3)(ii). Drivers of loads not moving in interstate commerce are not eligible for this exemption.
2. Drivers must have a copy of this exemption document in their possession while operating under the terms of the exemption and present it to law enforcement officials upon request.

3. The motor carriers operating under this exemption must maintain a “Satisfactory” safety rating with FMCSA, or be “Unrated.” Motor carriers with “Conditional” or “Unsatisfactory” FMCSA safety ratings are prohibited from using this exemption.
4. The motor carriers operating under this exemption must maintain Safety Measurement System (SMS) scores below FMCSA’s intervention thresholds, as displayed at <http://ai.fmcsa.dot.gov/sms/>.

Period of the Exemption

This exemption from the requirements of 49 CFR 395.3(a)(3)(ii) is granted for the period from 12:01 a.m., [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 11:59 p.m., [INSERT DATE TWO YEARS FOLLOWING PUBLICATION IN THE FEDERAL REGISTER].

Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii). These drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Any motor carrier utilizing this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMV drivers operating under the terms of this exemption. The notification must be e-mailed to MCPSD@DOT.GOV and include the following information:

- a. Identification of Exemption: "R&R,"
- b. Name of operating motor carrier and USDOT number,
- c. Date of the accident,
- d. City or town, and State, in which the accident occurred, or closest to the accident scene,
- e. Driver's name and license number and State of issuance,
- f. Vehicle number and State license plate number,
- g. Number of individuals suffering physical injury,
- h. Number of fatalities,
- i. The police-reported cause of the accident,
- j. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- k. The driver's total driving time and total on-duty time period prior to the accident.

Termination

FMCSA believes the motor carriers engaged in these operations will continue to

maintain their previous safety record while operating under this exemption. However, should problems occur, FMCSA will take all steps necessary to protect the public interest, including immediate revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: September 25, 2015

T.F. Scott Darling, III
Acting Administrator

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